

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES,

Plaintiff,

v.

KEISER McCLINTON,

Defendant.

Crim. No. 07-287 (WJM)

ORDER

THIS MATTER comes before the court on Defendant's motion for leave to file an appeal out-of-time; and the Fed. R. App. P. 4(b) stating that a defendant's notice of appeal must be filed within ten days of the entry of the judgment being appealed; and the District Court only being permitted to extend the time to file a notice of appeal up to thirty days upon a finding of excusable neglect or good cause; and judgment having been entered against Defendant on November 16, 2007; and Defendant having filed the motion for leave to appeal out-of-time on September 18, 2008; and the motion having been filed almost ten months after the entry of judgment; and the entry of this order coming days before the deadline for Defendant to file a petition under 28 U.S.C. § 2255; and for good cause appearing;

IT IS on this 12th day of November 2008, hereby

ORDERED that Defendant's motion for leave to file an appeal out-of-time is **DENIED**; and it is

FURTHER ORDERED that the deadline for Defendant to file a petition for relief under 28 U.S.C. § 2255, if any, is hereby extended to December 16, 2008; and it is

FURTHER ORDERED that, pursuant to *United States v. Miller*, 197 F.3d 644 (3d Cir. 1999), Defendant is advised that a petition under 28 U.S.C § 2255 must be all-inclusive, since once he files a §2255 petition, he will lose his ability to file a second or successive pleading absent Certification by the Court of Appeals.

/s/ William J. Martini

WILLIAM J. MARTINI, U.S.D.J.